



ANNUAL REPORT TO THE LEGISLATURE

1999 FORMAL DISCRIMINATION COMPLAINT ACTIVITY IN THE STATE CIVIL SERVICE

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FORMAL DISCRIMINATION COMPLAINT ACTIVITY IN THE STATE CIVIL SERVICE FOR CALENDAR YEAR 1999

PURPOSE OF REPORT

This report has been prepared pursuant to Government Code Section 19702.5(c), which requires the State Personnel Board (SPB) to annually report to the Legislature on formal discrimination complaint activity in the State civil service. It includes information submitted by State departments on complaints that were filed directly with them for the reporting period of January 1, 1999, through December 31, 1999. Information about informal discrimination complaints or complaints filed directly with the State Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission is not included.

CONTENT OF REPORT

- I. Summary of Findings
- II. Anti-Discrimination Laws
- III. The State Discrimination Complaint Process
- IV. The State Personnel Board Appeals Process
- V. Data Collection
 - Table 1 - Departments Reporting Formal Discrimination Complaints for 1999
 - Table 2 - Departments Reporting No Formal Discrimination Complaints for 1999
 - Table 3 - Formal Discrimination Complaints Reported by Departments in 1999 by Type of Discrimination Alleged
 - Table 4 - Formal Discrimination Complaints Reported by Departments in 1999 by Disposition
 - Table 5 - Actions Taken by Departments Against Responsible Parties in 1999
 - Table 6 - Average Time to Close Formal Discrimination Complaints in 1999 by Department
 - Table 7 - Outcome of Discrimination Complaints Appealed to the SPB in 1999

I. SUMMARY OF FINDINGS

The following information summarizes the formal discrimination complaint activity within the State civil service during calendar year 1999:

- Fifty departments reported receiving 555 formal discrimination complaints during the 1999 calendar year. (See Table 1)
- Thirty-eight departments reported receiving no formal discrimination complaints. (See Table 2)
- Many of the complaints filed by individuals charged more than one type of discrimination. When these multiple charges of discrimination are considered, total complaints increased to 865. (See Table 3)
- The most frequent formal complaints were as follows: Retaliation, 183 (21.2%); Sexual Harassment, 145 (16.8%); Race, 142 (16.4%); Disability, 105 (11.8%); and Sex, 98 (11.3%) (See Table 3)
- A finding of discrimination was made in 28 (11.1%) of the 253 complaints that were closed. (See Table 4).
- Adverse or other corrective action was taken in 67 (26.6%) of the 253 complaints closed. No action was taken in 186 (73.5%) of the complaints closed. (See Table 5)
- The average length of time to close a formal discrimination complaint was 97 days. Forty-nine cases exceeded the SPB's objective of 180 days for the department to issue a decision on a complaint. (See Table 6)
- One hundred fifteen departmental discrimination complaint decisions were appealed to the SPB. Of these appeals, 66 (57.4%) were closed and 49 (42.6) are still pending. (See Table 7)
- Of the 66 appeals closed by the SPB, 6 (9.1%) were settled and 60 (90.9%) were closed without a decision or settlement. (See Table 7)

II. ANTI-DISCRIMINATION LAWS

California Government Code Sections 19700-19705 prohibit discrimination against State employees and applicants based on sex, race, religious creed, color, national origin, ancestry, marital status, political affiliation, and disability. These sections also prohibit retaliation and harassment against State employees and applicants for filing a discrimination complaint with the department or directly with the SPB. Governor's Executive Order B-54-79 and Government Code Section 12940(I) prohibit discrimination on the basis of sexual orientation and sexual harassment respectively. Additional civil rights protection is provided through the following Federal laws: Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, the Pregnancy Discrimination Act of 1978, and the Americans with Disabilities Act of 1990.

III. THE DISCRIMINATION COMPLAINT PROCESS

Employees and applicants are required to file most formal discrimination complaints with the department involved. There are some exceptions, however. Complaints may be filed directly with the SPB if they involve: (1) retaliation for opposing discrimination; or (2) retaliation for participating in the discrimination complaint process by filing a complaint, or participating as a witness or other involved party; or (3) the executive director or other executive officers of a department.

The department's Equal Employment Opportunity or Affirmative Action (EEO/AA) Officer has the overall responsibility for managing the discrimination complaint process. This process may involve both an informal component and a formal component. While this report will not provide information about informal complaints, it is important to note that prior to filing a formal discrimination complaint, individuals are encouraged to seek informal resolution of their complaint through use of EEO Counselors. Counselors attempt to quickly gather the facts about the complaint and to resolve the problem. This informal process should not exceed the time frame in the department's discrimination complaint process. The SPB recommends that this informal process first be used because its purpose is to resolve complaints as quickly as possible, at the lowest organizational level, involving the fewest people.

If a complaint cannot be resolved through the informal process or the complainant chooses to bypass the process, the complainant then has the right to file a formal discrimination complaint. The complaint must be in writing. Upon the filing of a complaint, the EEO/AA Officer may assign the complaint to an EEO Investigator for formal investigation and provide supervision and assistance throughout the process. The EEO/AA Officer provides the complainant with a report or summary of investigation findings, and, with director/executive officer approval, may also provide the final determination of the department. The department must render a timely final decision on the complaint in accordance with internal time lines that they establish. Complainants are advised of their rights in the process as well as their appeal rights to the SPB. Complainants may appeal to the SPB in writing,

within 30 calendar days of the department's response to their complaint, or if the department fails to respond within the department's internal time lines.

IV. STATE PERSONNEL BOARD APPEALS PROCESS

Appeals of discrimination complaints accepted by the SPB are scheduled for hearings by an Administrative Law Judge (ALJ)*, who submits a proposed decision to the Five Member Board for review and final adoption. California Government Code Section 18671.1 provides that a decision shall be rendered within four months of the filing of a formal discrimination complaint appeal with the SPB. Appellants who receive an unsatisfactory decision may petition for rehearing within thirty days of receipt of the decision, on the basis of new and/or compelling evidence not considered in the original hearing.

V. DATA COLLECTION

The SPB asks each department to report all formal discrimination complaint activity on a quarterly basis for the calendar year. The information includes the number of complaints filed; the type of discrimination complaint; the complainants class code, work location, sex, ethnicity, and age; disposition of complaint; issues involved; remedies granted; actions taken against the responsible party; and dates of filing and resolution of each complaint.

The SPB has recently developed a new management database to maintain information reported by departments on departmental formal discrimination complaints and complaints appealed to the SPB. Because data for years prior to 1999 are not compatible, no data comparisons with previous years are made in this report. Data for Calendar Year 1999 are contained in the following tables.

* Beginning in July 1999, all discrimination complaint appeals were scheduled for evidentiary hearing. Informal hearings are no longer used for these cases because of the complexity of issues.

Table 1

Departments Reporting Formal Discrimination Complaints For 1999

<i>Department</i>	<i>Number of Complaints*</i>
Board of Control	1
Board of Equalization	15
California Conservation Corps	7
California Exposition and State Fair	3
California Postsecondary Education Commission	1
California State Lottery	1
Department of Aging	1
Department of Alcohol and Drug Programs	2
Department of Boating and Waterways	1
Department of the California Highway Patrol	1
Department of Consumer Affairs	6
Department of Corrections	168
Department of Developmental Services	34
Department of Education	10
Department of Fair Employment and Housing	6
Department of Fish and Game	2
Department of Food and Agriculture	5
Department of Forestry and Fire Protection	19
Department of General Services	7
Department of Health Services	10
Department of Housing & Community Development	3
Department of Industrial Relations	8
Department of Justice	20
Department of Mental Health	15
Department of Motor Vehicles	13
Department of Parks and Recreation	7
Department of Personnel Administration	1
Department of Real Estate	1
Department of Rehabilitation	6

Table 1 – Cont'd

<i>Department</i>	<i>Number of Complaints*</i>
Department of Social Services	15
Department of the Youth Authority	62
Department of Toxic Substances Control	4
Department of Transportation	39
Department of Veterans Affairs	9
Department of Water Resources	2
Employment Development Department	16
Health and Human Services Data Center	1
Military Department	1
Office of Criminal Justice Planning	1
Office of Emergency Services	1
Office of State Controller	4
Office of Statewide Health Planning & Development	1
Prison Industry Authority	11
Public Utilities Commission	4
State Water Resources Control Board	2
Secretary of State	3
State Air Resources Board	1
State Compensation Insurance Fund	1
State Energy Resources Conservation & Development Commission	1
Stephen P. Teale Consolidate Data Center	2
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Total	555

*** Does Not Include Multiple Complaints By Individuals.**

Table 2

Departments Reporting No Formal Discrimination Complaints For 1999

Department

Agricultural Labor Relations Board
Board of Corrections
Board of Governors-California Community Colleges
Board of Prison Terms
Bureau of State Audits
California Coastal Commission
California Horse Racing Board
California Housing Finance Agency
California Integrated Waste Management Board
California Science Center
California State Library
California Student Aid Commission
Commission on Peace Officers Standards and Training
Commission on Teacher Credentialing
Department of Alcoholic Beverage Control
Department of Conservation
Department of Corporations
Department of Community Services and Development
Department of Finance
Department of Financial Institutions
Department of Insurance
Department of Pesticide Regulation
Fair Political Practices Commission
Franchise Tax Board
Legislative Counsel Bureau
Office of Administrative Law
Office of Environmental Health Hazard Assessment
Office of Real Estate Appraisers
Public Employment Relations Board

Table 2 – Cont'd

Department

Public Employees Retirement System
State Coastal Conservancy
State Lands Commission
State Personnel Board
State Public Defender
State Teachers Retirement System
State Treasurer
Trade and Commerce Agency
Unemployment Insurance Appeals Board

Table 3

***Formal Discrimination Complaints
Reported By Departments In 1999
By Type Of Discrimination Alleged***

<i>Discrimination Type</i>	<i>Number*</i>	<i>Percentage</i>
Age	46	5.3%
Ancestry	22	2.5%
Color	44	5.1%
Disability	102	11.8%
Marital Status	11	1.3%
National Origin	29	3.4%
Political Affiliation	1	0.1%
Race	142	16.4%
Religion	15	1.7%
Retaliation	183	21.2%
Sex	98	11.3%
Sexual Harassment	145	16.8%
Sexual Orientation	27	3.1%
Total:	865	100.0%

* Includes Multiple Complaints By Individuals

Table 4

Formal Discrimination Complaints Reported by Departments In 1999 By Disposition

<i>Type of Disposition</i>	<i>Number</i>	<i>Percentage Subtotal</i>	<i>Total</i>
<i><u>Cases Closed After Investigation Completed</u></i>			
Discrimination found - Case appealed to SPB	2	1.3%	0.8%
Discrimination found.	26	16.4%	10.3%
Discrimination not found - Case appealed to SPB	8	5.0%	3.2%
Discrimination not found.	104	65.4%	41.1%
Resolved by mutual agreement.	19	11.9%	7.5%
Subtotal:	159	100.0%	62.8%
<i><u>Cases Closed Before Investigation Completed</u></i>			
Closed - Allegations not based on protected group status.	52	55.3%	20.6%
Closed - Appellant did not pursue.	12	12.8%	4.7%
Closed - Complaint withdrawn.	17	18.1%	6.7%
Process terminated - Adverse action initiated against complainant.	13	13.8%	5.1%
Subtotal:	94	100.0%	37.2%
Total Cases Closed:	253		100.0%
Cases Pending:	302		

Table 5

Actions Taken By Departments Against Responsible Parties In 1999

<i>Action Taken</i>	<i>Number</i>	<i>Percentage</i>	
		<i>Subtotal</i>	<i>Total</i>
Demotion	2	3.0%	0.8%
Dismissal	10	14.9%	4.0%
Formal Reprimand	3	4.5%	1.2%
Informal Reprimand	14	20.9%	5.5%
Reassignment	4	6.0%	1.6%
Reduction in Salary	3	4.5%	1.2%
Required Training	12	17.9%	4.7%
Suspension	5	7.5%	2.0%
Verbal Counseling	14	20.9%	5.5%
Subtotal:		67	100.0%
			26.5%
<i>No Action Taken</i>			
<i>Investigation Completed</i>			
Complaints - No Discrimination Found	92	49.5%	36.3%
Complaints - Discrimination Found	5	2.7%	2.0%
<i>Investigation Not Completed</i>			
Complaints - Discrimination Not Determined	89	47.8%	35.2%
Subtotal:		186	100.0%
			73.5%
Total Cases Closed:		253	100.0%

Table 6

Average Time To Close Formal Discrimination Complaints In 1999 By Department

<i>Department</i>	<i>Total Closed</i>	<i>Cases Exceeding 180 Days</i>	<i>Average Time (in Days)</i>
Board of Control	1		36
Board of Equalization	10	3	126
California Conservation Corps	6	2	125
California Exposition and State Fair	2		38
Department of Alcohol and Drug Programs	2		46
Department of Boating and Waterways	1		4
Department of California Highway Patrol	1		49
Department of Consumer Affairs	2		110
Department of Corrections	35	7	85
Department of Developmental Services	14	1	74
Department of Education	2		136
Department of Fair Employment and Housing	5		63
Department of Fish and Game	2	1	162
Department of Food and Agriculture	5		60
Department of Forestry and Fire Protection	15	4	137
Department of General Services	5		73
Department of Health Services	6	1	116
Department of Housing & Community Development	3	2	201
Department of Industrial Relations	6		146
Department of Justice	18	10	164
Department of Mental Health	9		66
Department of Motor Vehicles	9	3	116
Department of Parks and Recreation	4	1	96
Department of Personnel Administration	1		83

Table 6 – Cont'd

<i>Department</i>	<i>Total Closed</i>	<i>Cases Exceeding 180 Days</i>	<i>Average Time (in Days)</i>
Department of Real Estate	1		42
Department of Rehabilitation	2		83
Department of Social Services	8	5	147
Department of the Youth Authority	28		41
Department of Toxic Substances Control	4	2	193
Department of Transportation	8	3	119
Department of Veterans Affairs	7		41
Department of Water Resources	1		41
Employment Development Department	9	1	97
Health and Welfare Data Center	1		38
Office of State Controller	4		18
Office of Statewide Health Planning & Development	1	1	246
Prison Industry Authority	7		62
Public Utilities Commission	3	2	202
State Water Resources Control Board	1		36
Secretary of State	3		48
Stephen P. Teale Consolidate Data Center	1		51
Total:	253	49	97

Table 7

Outcome Of Discrimination Complaints Appealed To The State Personnel Board In 1999

<i>Disposition</i>	<i>Number</i>	<i>Percentage</i>	
		<i>Subtotal</i>	<i>Total</i>
<u>Appeals Decided or Settled</u>			
Negotiated Settlement	1	16.7%	1.5%
Stipulation Approved by the Executive Officer	1	16.7%	1.5%
Stipulation Approved by the SPB	4	66.6%	6.1%
Subtotal:	6	100.0%	9.1%
<u>Other Appeals Closed</u>			
Appeal Not Accepted – No Jurisdiction, No Grounds, or Not Timely	46	76.6%	69.7%
Appeal Withdrawn	13	21.7%	19.7%
Appellant Did Not Appear For Hearing	1	1.7%	1.5%
Subtotal:	60	100.0%	90.9%
Total Appeals Closed:		66	100.0%
<u>Summary</u>			
Total Appeals Closed	66		57.4%
Appeals Pending	49		42.6%
Total Appeals:	115		100.0%